

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

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UNITED STATES OF AMERICA

v.

DAMIEN DRE GONZALES

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CASE NO. 5:20-CR-123-H-BQ-1

**REPORT AND RECOMMENDATION ON PLEA
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

This case has been referred by the United States district judge to the undersigned for the taking of a guilty plea. The parties have consented to appear before a United States magistrate judge for these purposes. This Report and Recommendation on Plea is submitted to the Court under 28 U.S.C. § 636(b)(3). **The undersigned notes that the plea agreement contains a Rule 11(a)(2) agreement whereby Defendant enters a conditional plea of guilty, reserving his right to have the Fifth Circuit review this Court's denial of his Motion to Dismiss Indictment filed December 17, 2020 (ECF No. 23) and withdraw the plea of guilty should he prevail on appeal. See Fed. R. Crim. P. 11(a)(2).**

Defendant appeared with counsel before the undersigned United States magistrate judge, who addressed Defendant personally in open court and informed Defendant of, and determined that Defendant understood, the admonitions contained in Rule 11 of the Federal Rules of Criminal Procedure.

Defendant pleaded guilty (under a written plea bargain agreement with the

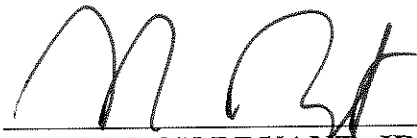
government) to *Count One of the Indictment charging defendant with a violation of 18 U.S.C. §§ 1201(a)(1), 1201(d), and 1201(g)(1), that is, Kidnapping*. After examining Defendant under oath the undersigned magistrate judge finds the following:

1. Defendant, upon advice of counsel, has consented orally and in writing to enter this guilty plea before a magistrate judge, subject to final approval and sentencing by the presiding district judge;
2. Defendant fully understands the nature of the charges (including each essential element of the offense(s) charged) and penalties;
3. Defendant fully understands the terms of the plea agreement and plea agreement supplement;
4. Defendant understands all constitutional and statutory rights and wishes to waive these rights, including the right to a trial by jury and the right to appear before a United States district judge;
5. Defendant's plea is made freely and voluntarily;
6. Defendant is competent to enter this plea of guilty;
7. There is a factual basis for Defendant's plea of guilty; and
8. The ends of justice are served by acceptance of Defendant's plea of guilty.

Although I have conducted these proceedings and recommend acceptance of Defendant's plea of guilty, the United States district judge has the power to review my actions and possesses final decision-making authority in this proceeding. Thus, if Defendant has any objections to these findings or any other action of the undersigned, he is required to make those known to the United States district judge within fourteen (14) days of today.

Based on the foregoing I recommend that Defendant's plea of guilty be accepted, that Defendant be adjudged guilty, and that sentence be imposed accordingly, subject to the Court's determination of whether it consents to Defendant's conditional plea. *See* Fed. R. Crim. P. 11(a)(2) (stating a defendant may enter a conditional plea "[w]ith the consent of the court and the government . . .").

Signed: February 17, 2021.

A handwritten signature in black ink, appearing to read 'D. Bryant', is written over a horizontal line.

D. GORDON BRYANT, JR.
UNITED STATES MAGISTRATE JUDGE